

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION

RightCHOICE Managed Care, Inc., et al.,)
Plaintiffs)
v.) Cause No. 5:18-CV-06037-DGK
Hospital Partners, Inc.; et al.)
Defendants.)

DEFENDANTS HOSPITAL PARTNERS, INC., EMPOWER H.I.S., LLC, AND JORGE PEREZ'S MOTION FOR SUMMARY JUDGMENT

Defendants Hospital Partners, Inc., Empower H.I.S., LLC, and Jorge Perez (collectively “Defendants”), by and through undersigned counsel, hereby request entry of summary judgment in their favor and against Plaintiffs on all of Plaintiffs claims against Defendants pursuant to Federal Rule of Civil Procedure 56. In support of their motion, Defendants submit the accompanying brief. As the brief requests, Defendants request the Court enter summary judgment as follows:

1. Defendants are entitled to summary judgment on Count I (fraudulent misrepresentation) and Count II (negligent misrepresentation), because Plaintiffs have failed to establish that Defendants made false representations, that Plaintiffs justifiably relied upon some alleged misrepresentations, and that Plaintiffs were damaged by these alleged misrepresentations.

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2. Defendants are entitled to summary judgment on Count III (restitution under ERISA), because Plaintiffs undeniably seek recovery out of Defendants “common pool” of assets (a legal remedy) and ERISA only provides equitable relief.

3. Defendants are entitled to summary judgment on Count IV (declaratory and injunctive relief under ERISA), because Defendants did not misrepresent their reimbursement claims and did not violate Putnam’s Participating Hospital Agreement.

4. Defendants are entitled to summary judgment on Count V (tortious interference with a contract), because Plaintiffs cannot prove that Putnam breached the Participating Hospital Agreement.

5. Defendants are entitled to summary judgment on Count VI (civil conspiracy) and VII (aiding and abetting a tort), because Plaintiffs cannot demonstrate that Defendants committed an underlying tort.

6. Defendants are entitled to summary judgment on Counts VIII (unjust enrichment) and IX (money had and received), because Plaintiffs have failed to establish the necessary elements for each claim and Plaintiffs cannot recover under these equitable theories when contract remedies exist.

For the reasons above and set forth in Defendants’ Memorandum in Support of their Motion for Summary Judgment, Defendants respectfully request this Court grant summary judgment in their favor and for such further relieve this Court deems just and proper.

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Certificate of Service

I hereby certify that on 28th day of February, 2020, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system.

/s/ Ronald D. Marney II